

COMMENTS ON PROPOSED EXECUTIVE ORDER ENTITLED  
"NATIONAL SECURITY INFORMATION"

A. Page 9, Section 1.3(c)

Change to read: "Unauthorized disclosure of foreign government information, intelligence sources or methods information, cryptologic information, or the identity of a confidential foreign source is presumed to cause damage to the national security."

The addition of "...information, cryptologic information. . . ." will provide protection for intelligence information whose unauthorized disclosure invariably would cause damage.

B. Page 20, Section 3.4(b)

Restructure the first two sentences to read: "Information originated by a President, the White House Staff, by committees, commissions, or boards appointed by the President, or others specifically providing advice and counsel to a President or acting on behalf of a President is exempted from the provision of Section 3.4(a). The Archivist of the United States shall have authority to review and declassify such information in the possession and control of the Administrator of General Services pursuant to Section 2107, 2107 note, or 2203 of Title 44 U.S.C."

This is consistent with the coverage of Archivist authority provided elsewhere in the draft, which authority includes only that information in GSA custody.

C. Page 25, Section 4.1(d)

Delete the second sentence, which addresses the authority of the Attorney General to use classified information in legal proceedings.

If this newly added provision simply authorizes the Attorney General to determine what classified information may be needed to support legal proceedings, then it adds nothing to the discretion already possessed by the Attorney General in this regard and is totally unnecessary. If, on the other hand, this provision intends to provide the Attorney General with the authority to decide when classified information originated by another Agency will, in fact, be used in a legal proceeding, then it upsets the delicate balancing process presently used to resolve this issue. The draft procedures to Executive Order 12333 describe this process in detail. These procedures provide for various levels of consultation between affected agencies and the Attorney General

concerning the use of classified information in legal proceedings, and permit the Agency to appeal to the President in cases of disagreement with the Attorney General. These procedures reflect the current understanding as to how decisions are made in determining whether classified information can be used in legal proceedings. The "third agency rule" contained in section 4.1(d) in no way affects this understanding or requires the inclusion of the present ambiguous provision addressing Attorney General authority in this regard.

D. Page 25, Section 4.2(a)

Delete the last sentence.

This provision concerning special access programs pertaining to cryptology is unnecessary. We understand the Department of Defense also is recommending this provision be deleted.

E. Page 26, Section 4.2(b)

Delete entire section.

This requirement is unclear, unnecessary, burdensome and has failed to work in present Executive Order 12065.

F. Page 34, Section 5.4(d)

Change the last sentence to read: "Either shall ensure that the Director of the Information Security Oversight Office is periodically informed of violations under Section 5.4(b)(1) and promptly notified whenever a violation under Section 5.4(b)(2) occurs."

Notifying the Director, ISOO, of each disclosure of classified information would adversely impact the Agency's polygraph program. Periodic notification of such violations will permit ISOO to fully perform its oversight functions in this area.